

Justin F. Kollar
Prosecuting Attorney

Kevin K. Takata
First Deputy



Rebecca A. Vogt
Second Deputy

Diana Gausepohl-White
Victim/Witness Program Director

OFFICE OF THE PROSECUTING ATTORNEY

County of Kaua'i, State of Hawai'i

3990 Ka'ana Street, Suite 210, Lihue, Hawai'i 96766
808-241-1888 ~ FAX 808-241-1758
Victim/Witness Program 808-241-1898 or 800-668-5734

**TESTIMONY IN STRONG SUPPORT OF
SB225 SD1 – RELATING TO DRIVING UNDER THE INFLUENCE**

Justin F. Kollar, Prosecuting Attorney
County of Kaua'i

House Committee on Judiciary
April 2, 2015, 2:00 p.m., Conference Room 325

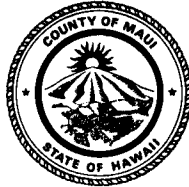
Chair Rhoads, Vice Chair San Buenaventura, and Members of the Committee:

The County of Kaua'i, Office of the Prosecuting Attorney, **STRONGLY SUPPORTS** SB 225 SD1 – Relating to Driving Under the Influence. The Bill addresses a loophole by expanding the definition of “*habitual operator of a vehicle while under the influence of an intoxicant*,” as it exists under HRS Section 291E-61.5(b). Under current law, a prior felony conviction for Habitually Operating a Vehicle Under the Influence of an Intoxicant (“HOVUII”) is treated the same as a prior petty misdemeanor conviction for Operating a Vehicle Under the Influence of an Intoxicant (“OVUII”). Because of this, a loophole exists where a person committing OVUII after being convicted of HOVUII may not have to status of a habitual operator.

For example, under current law, a person was convicted of OVUII in 2002, 2003, and 2010, and was also convicted of HOVUII in 2012. If that same person commits an OVUII in 2014, the person could not be charged with HOVUII even though that person was determined to be a habitual operator just two years prior. The problem is that the HOVUII is treated the same as an OVUII conviction. The 2002, and 2003 convictions must be disregarded, leaving the person with only two convictions. SB 225 will close this loophole by keeping a person's habitual operator status for a period of ten years, and make that status apply to subsequent offenses within that time period.

Accordingly, we are in **STRONG SUPPORT** of SB225 SD1. We request that your Committee **PASS** the Bill.

ALAN M. ARAKAWA
Mayor



JOHN D. KIM
Prosecuting Attorney

ROBERT D. RIVERA
First Deputy Prosecuting Attorney

DEPARTMENT OF THE PROSECUTING ATTORNEY
COUNTY OF MAUI
150 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
PHONE (808) 270-7777 • FAX (808) 270-7625

CONTACT: RICHARD. K. MINATOYA
Deputy Prosecuting Attorney
Supervisor - Appellate, Asset Forfeiture and Administrative Services Division

TESTIMONY
ON
SB 225, SD 1 - RELATING TO DRIVING UNDER THE INFLUENCE

April 2, 2015

The Honorable Karl Rhoads
Chair
The Honorable Joy A. San Buenaventura
Vice Chair
and Members
House Committee on Judiciary

Chair Rhoads, Vice Chair San Buenaventura and Members of the Committee:

The Department of the Prosecuting Attorney, County of Maui, STRONGLY SUPPORTS SB 225, SD 1 - Relating to Driving Under the Influence. SB 225, SD 1 seeks to expand the definition of "*habitual operator of a vehicle while under the influence of an intoxicant*" as it exists under HRS Section 291E-61.5(b). Under the current law, a prior felony conviction for Habitually Operating a Vehicle Under the Influence of an Intoxicant ("HOVUII") is treated the same as a prior petty misdemeanor conviction for Operating a Vehicle under the Influence of an Intoxicant ("OVUII") for purposes of triggering a subsequent HOVUII charge. Because of this, a loophole exists where a person committing OVUII after being convicted of HOVUII may not have the status of a habitual operator.

For example, under the current law, a person was convicted of OVUII in 2002, 2003 and 2010, and was also convicted for HOVUII in 2012. If the person commits OVUII in 2014, the person cannot be charged with HOVUII even though he/she was determined to be a habitual operator just two years prior. The problem is that the HOVUII conviction is treated the same as an OVUII conviction. The 2002 and 2003 convictions must be disregarded, leaving the person

with only two prior convictions. SB 225, SD 1 will close this loophole by keeping a person's habitual operator status for a period of ten years, and make that status apply to subsequent offenses within that time period.

Accordingly, the Department of the Prosecuting Attorney, County of Maui, **STRONGLY SUPPORTS** the passage of this bill. We ask that the committee **PASS** SB 225, SD 1.

Thank you very much for the opportunity to provide testimony on this bill.

MITCHELL D. ROTH
PROSECUTING ATTORNEY

DALE A. ROSS
FIRST DEPUTY
PROSECUTING ATTORNEY



655 KĪLAUEA AVENUE
HILO, HAWAII 96720
PH: (808) 961-0466
FAX: (808) 961-8908
(808) 934-3403
(808) 934-3503

WEST HAWAII UNIT
81-980 HALEKĪ ST, SUITE 150
KEALAKEKUA, HAWAII 96750
PH: (808) 322-2552
FAX: (808) 322-6584

OFFICE OF THE PROSECUTING ATTORNEY

TESTIMONY IN SUPPORT OF SENATE BILL 225 SD1

A BILL FOR AN ACT RELATING TO DRIVING UNDER THE INFLUENCE

COMMITTEE ON JUDICIARY

Rep. Karl Rhoads, Chair

Rep. Joy A. San Buenaventura, Vice Chair

Thursday, April 2, 2015, 2:00 p.m.

State Capitol, Conference Room 325

Honorable Chair Rhoads, Vice-Chair San Buenaventura, and Members of the Committee on Judiciary, the Office of the Prosecuting Attorney, County of Hawai'i submits the following testimony in support of Senate Bill No. 225 SD1.

This measure amends the offense of habitually operating a vehicle under the influence of an intoxicant to include operating a vehicle under the influence of an intoxicant after at least one conviction within the previous ten years for habitually operating a motor vehicle under the influence of an intoxicant.

Under the current law, a prior felony conviction for Habitually Operating a Vehicle Under the Influence of an Intoxicant (HOVUII) is treated the same as a prior petty misdemeanor conviction for Operating a Vehicle under the Influence of an Intoxicant (OVUII) for purposes of triggering a subsequent HOVUII charge.

Currently, a loophole exists where a person committing OVUII after being convicted of HOVUII may not have the status of a habitual operator. This Bill will close this loophole by keeping a person's habitual operator status for a period of ten years, and make that status apply to subsequent offenses within that time period.

The Office of the Prosecuting Attorney, County of Hawai'i supports the passage of Senate Bill No. 225 SD1. Thank you for the opportunity to testify on this matter.



Mothers Against Drunk Driving HAWAII
745 Fort Street, Suite 303
Honolulu, HI 96813
Phone (808) 532-6232
Fax (808) 532-6004
hi.state@madd.org

April 2, 2015

To: Representative Karl Rhoads, Chair — House Committee on Judiciary;
Rep. Joy San Buenaventura, Vice Chair, and members of the Committee

From: Arkie Koehl/Carol McNamee—Co-chairmen, Public Policy Committee -
MADD Hawaii

Re: Senate Bill 225, SD 1 – Relating to Driving Under the Influence

I am Arkie Koehl, offering testimony on behalf of the Hawaii Chapter of Mothers Against Drunk Driving in support of Senate Bill 225, SD1. This corrects an unfortunate loophole in our statutes relating to Habitual Offenders.

Because the offense of *Habitually Operating a Vehicle Under the Influence of an Intoxicant* – for a person who has had three convictions for OVUII and then is convicted on a fourth OVUII incident – is a felony, it creates its own “category” of impaired driving crimes. However, there is nothing in the current statutes which creates a special category, leading to the problem of another OVUII arrest and conviction, after four previous OVUII offenses, conceivably going back to being considered a first offense, a misdemeanor.

The new language proposed in this bill will correct the problem by clarifying that an OVUII offense following a conviction for Habitually Operating a Vehicle Under the Influence of an Intoxicant would also result in a felony charge of HOVUII.

MADD encourages the passage of SB 225, SD1 to correct a problem in the statutes relating to the most serious OUVII offenders.

Thank you for this opportunity to testify.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET • HONOLULU, HAWAII 96813
TELEPHONE: (808) 529-3111 • INTERNET: www.honolulupd.org



KIRK CALDWELL
MAYOR

LOUIS M. KEALOHA
CHIEF

DAVE M. KAJIHIRO
MARIE A. MCCAULEY
DEPUTY CHIEFS

OUR REFERENCE
CT-GR

April 2, 2015

The Honorable Karl Rhoads, Chair
and Members
Committee on Judiciary
State Senate
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Rhoads and Members:

SUBJECT: Senate Bill No. 225, S. D. 1, Relating to Driving Under the Influence

I am Calvin Tong, Major of the Traffic Division of the Honolulu Police Department (HPD), City and County of Honolulu. The HPD supports the passage of Senate Bill No. 225, S. D. 1, Relating to Driving Under the Influence.

The passage of this bill would strengthen the existing law concerning Habitually Operating a Vehicle Under the Influence of an Intoxicant (OVUII). Currently, in order to be convicted of Habitually OVUII, a driver must have at least three prior petty misdemeanor or felony convictions for OVUII within the previous ten years. This bill would qualify a person who has a single prior conviction for Habitually OVUII as a "habitual operator" for the ten years following his or her conviction. It would not eliminate the need for the three prior petty misdemeanor OVUII convictions to initially qualify as a "habitual operator."

According to a study by the National Highway Traffic Safety Administration, a person with prior Driving Under the Influence (DUI) convictions is 4.1 times more likely to be involved in a fatal motor vehicle collision. Another study has shown that the chances of being involved in a fatal motor vehicle collision increase with every additional DUI arrest.

Habitually OVUII is a serious felony offense punishable by up to five years in prison in addition to driver license revocation, fines, and other sanctions. Drivers who have been stopped, arrested, and convicted for Habitually OVUII have repeatedly demonstrated their reluctance to stop driving while impaired by alcohol or drugs despite the sanctions placed upon them by the courts. Their actions create a substantial and unjustifiable risk to the general public. Allowing a single Habitually OVUII conviction to qualify a person as a "habitual operator" for the next ten years sends a strong and clear message that his or her actions are serious and will be treated as such by the criminal justice system.

The Honorable Karl Rhoads, Chair
and Members
Committee on Judiciary
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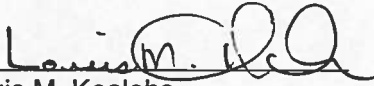
The HPD urges you to support Senate Bill No. 225, S. D. 1, Relating to Driving Under the Influence.

Thank you for the opportunity to testify.

Sincerely,


Calvin Tong, Major
Traffic Division

APPROVED:


Louis M. Kealoha
Chief of Police

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

ALII PLACE
1060 RICHARDS STREET • HONOLULU, HAWAII 96813
PHONE: (808) 547-7400 • FAX: (808) 547-7515

LATE

KEITH M. KANESHIRO
PROSECUTING ATTORNEY



ARMINA A. CHING
FIRST DEPUTY PROSECUTING ATTORNEY

THE HONORABLE KARL RHOADS, CHAIR
HOUSE COMMITTEE ON JUDICIARY
Twenty-Eighth State Legislature
Regular Session of 2015
State of Hawai`i

April 2, 2015

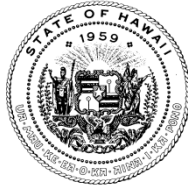
RE: S.B. 225, S.D. 1; RELATING TO HABITUALLY OPERATING A VEHICLE WHILE UNDER THE INFLUENCE OF AN INTOXICANT.

Chair Rhoads, Vice-Chair San Buenaventura, and members of the House Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in support of S.B. 225, S.D.1. The purpose of this bill is to clarify the definition of "habitual operator of a vehicle while under the influence of an intoxicant" ("HOVUII"), to ensure charging, sentencing and oversight that are commensurate with the offense.

Essentially, the current definition of HOVUII requires that someone have at least 3 prior convictions of operating a vehicle under the influence of an intoxicant ("OVUII") and/or HOVUII, within the past 10 years, and is now caught a fourth time within the same 10 years to substantiate a new HOVUII charge. However, if that person is convicted of HOVUII, and subsequently caught for the same type of activity, but enough time has gone by for 2 of the prior OVUII (and/or HOVUII) convictions to fall outside of the 10-year window, the current definition of HOVUII would not allow us to charge HOVUII for this new offense, no matter how recently or how many times that offender has been convicted of HOVUII. Please keep in mind that some offenders will get 2 OVUII convictions in the same year, or in consecutive years, so 2 prior convictions can fall outside of the 10-year window relatively quickly.

Anyone who is convicted of HOVUII, yet continues to drive under the influence, clearly presents a grave risk to public safety and welfare, and strong measures must be taken to address this type of situation. Moreover, such persons have a substantial problem that must be taken very seriously for their own sake as well. Changes proposed in S.B. 225, S.D.1, would assist in the appropriate enforcement and oversight of these offenses, and ensure that the definition of "habitual operator of a vehicle while under the influence of an intoxicant" more-closely reflects the plain meaning of this term.

For all of these reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu supports the passage of S.B. 225, S.D.1. Thank you for this opportunity to testify.



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

IN REPLY REFER TO:

April 2, 2015
2:00 p.m.
State Capitol, Room 325

**S.B. 225, S.D. 1
RELATING TO DRIVING UNDER THE INFLUENCE**

House Committee on Judiciary

The Department of Transportation (DOT) **supports** S.B. 225, S.D. 1 relating to driving under the influence. This bill will enhance the offense of the habitual driving under the influence of an intoxicant (HOVUII).

This bill will close the loophole by making the offense of operating a vehicle under the influence of an intoxicant (OVUII) after being convicted of a HOVUII (three or more convictions in a ten year period) as another felony if committed within the past ten years.

Presently, the conviction of HOVUII is treated as another OVUII (petty misdemeanor) and does not count as another felony if the previous two OVUII convictions are outside of the ten year period. There have been numerous violators who have been in this situation and have not been prosecuted as another HOVUII. This measure would close this loophole for those drivers who are constantly being arrested for OVUII.

The DOT urges your support by passing S.B. 225, S.D. 1, as this bill would close the loophole by making subsequent convictions of OVUII a felony.

Thank you for the opportunity to provide testimony.